

STAKE MINING CO.

IBLA 83-720, IBLA 83-813,  
IBLA 83-826, IBLA 83-944

Decided November 29, 1983

Appeals from decisions of Montana State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. 83-720: M MC 642, M MC 663, M MC 937 through M MC 940, M MC 985, M MC 986, M MC 2807 through M MC 3293, M MC 4208 through M MC 4274, M MC 9170 through M MC 9529, M MC 9640 through M MC 9647, M MC 40511 through M MC 40713, M MC 42422 through M MC 42426, M MC 45127 through M MC 45606, M MC 46883 through M MC 47063, M MC 56330 through M MC 56340, M MC 57797 through M MC 57896, M MC 57931 through M MC 58277, M MC 59683 through M MC 59918, M MC 59983 through M MC 60031, M MC 61567 through M MC 61584, M MC 62273, M MC 62274, M MC 62349 through M MC 62553, M MC 62705 through M MC 62710, M MC 71529 through M MC 71625, M MC 72556 through M MC 72566, M MC 75709 through M MC 75762, M MC 76002 through M MC 76009, M MC 78446 through M MC 78452, M MC 80553 through M MC 80555; 83-813: M MC 19451 through M MC 19464, M MC 53015 through M MC 53038; 83-826: M MC 39073 through M MC 39337, M MC 43917 through M MC 44261, M MC 60112 through M MC 60144, M MC 84850 through M MC 84904; 83-944: M MC 54964 through M MC 54971.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. The owner of a mining claim located after Oct. 21, 1976, must file a copy of the notice of location with BLM within 90 days after the date of location, and must file either a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of the calendar year after the claim was located and prior to Dec. 31 of each year thereafter. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication--Evidence: Generally--Evidence: Presumptions--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it, and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: John McMunn, Esq., San Francisco, California, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decisions of May 18, June 16, July 11, and August 17, 1983, the Montana State Office, Bureau of Land Management (BLM), declared a number of unpatented mining claims in South Dakota 1/ abandoned and void for failure of the owner of the claims to file on or before December 30, 1982, evidence of annual assessment work or a notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Homestake Mining Company appeals on its own behalf as owner of many of the claims, and as lessee on others, stating that the required assessment work was performed in 1982, recorded in the appropriate county of South Dakota, and copies of the proofs of labor were sent by certified mail to BLM in October 1982.

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1/ See Appendix.

The claims were located at various times, both before and after October 21, 1976, and were timely recorded with BLM as required by FLPMA.

BLM has stated that it has no record of receipt of any proof of labor for any of the claims in 1982.

[1] Under section 314 of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the county where the notice of location is recorded and in the proper office of BLM on or before December 30 of each calendar year following the date of first recording a proof of labor or notice of intention to hold the claim with BLM. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner, and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's argument that the intent not to abandon was manifest we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

Appellant asserts that the proofs of labor had been mailed to BLM in October 1982. However, it has not submitted any evidence that the documents were actually received by BLM. The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if appellant could offer concrete proof that the envelope containing the evidence of assessment work was mailed by appellant but lost, misplaced, or misdirected by the Postal Service, that fact would not permit a finding that appellant had complied with the cited regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

When Congress enacted the recordation provisions codified in 43 U.S.C. § 1744 (1976), it gave BLM and this Board no authority to waive these requirements. Lynn Keith, *supra*. As no proofs of labor were received by the proper office of BLM in 1982, BLM had no choice but to declare the claims abandoned and void, pursuant to FLPMA. Appellant has not offered any proof that the proper BLM office in fact received the proofs of labor and this Board has no choice but to uphold the BLM determination. 2/

Appellant has requested a hearing before an Administrative Law Judge to present what it considers factual issues. As appellant has offered no evidence which would demonstrate receipt of the proofs of labor by BLM thereby creating an issue of fact, we must conclude that a hearing would not accomplish anything which would be useful in the disposition of this appeal. Accordingly, the request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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R. W. Mullen     Anne Poindexter Lewis  
Administrative Judge

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Administrative Judge

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2/ Although it had no bearing on our determination, it appears that Homestake has relocated these claims.

